

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID MICHAEL JONKER,

Plaintiff,

VS.

STATE OF WASHINGTON,
DEPARTMENT OF CORRECTIONS,
BENTON COUNTY PROSECUTORY
TERRY J. BLOOR, GEORGE
MARLTON and JAMES E. EGAN.

Defendants.

NO. CV-12-5043-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
COMPLAINT

1915(g)

Magistrate Judge Imbrogno filed a Report and Recommendation on November 30, 2012, recommending Mr. Jonker's complaint be dismissed with prejudice as frivolous and for failure to state a claim upon which relief may be granted except as to the claim under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), which was recommended to be dismissed, without prejudice to pursue appropriate state court remedies regarding his conviction and sentence. A copy of this Report and Recommendation was returned on December 18, 2012, as undeliverable, with the notation, "not in custody." Although admonished to do so, Plaintiff has not kept the Court apprised of his current address.

There being no objections, the Court **ADOPTS** the Report and

1 Recommendation. The complaint is **DISMISSED in part** as frivolous and for
2 failure to state a claim upon which relief may be granted, and **in part**
3 **without prejudice** to pursuing appropriate state court remedies regarding
4 his conviction and sentence.

5 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
6 who brings three or more civil actions or appeals which are dismissed as
7 frivolous or for failure to state a claim will be precluded from
8 bringing any other civil action or appeal *in forma pauperis* "unless the
9 prisoner is under imminent danger of serious physical injury." 28
10 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory**
11 **provisions under 28 U.S.C. § 1915.** **This dismissal of Plaintiff's**
12 **complaint may count as one of the three dismissals allowed by 28 U.S.C.**
13 **§ 1915(g) and may adversely affect his ability to file future claims.**

14 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
15 Order, enter judgment, forward a copy to Plaintiff at his last known
16 address, and close the file. The Clerk's Office further directed to
17 forward a copy of this Order to the Office of the Attorney General of
18 Washington, Criminal Justice Division. The Court certifies any appeal
19 of this dismissal would not be taken in good faith.

20 **DATED** this 24th day of January 2013.

21
22
23
24 S/ Edward F. Shea
EDWARD F. SHEA
25 SENIOR UNITED STATES DISTRICT JUDGE
26
27

28 Q:\EFS\Civil\2012\prisoner12cv5043ci-1-23-ADPrrdis1915g.wpd

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING COMPLAINT -- 2